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No. 89-1080

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

THE BOARD OF EDUCATION OF OKLAHOMA CITY PUBLIC SCHOOLS, INDEPENDENT SCHOOL DISTRICT NO. 89, OKLAHOMA COUNTY, OKLAHOMA,
Petitioner,

v.

ROBERT L. DOWELL, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF THE DEKALB COUNTY BOARD OF EDUCATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Amicus curiae will address the following questions:

1. Whether the legal standards for modification of antitrust decrees imposed upon private parties as enunciated in *United States* v. *Swift & Co.*, 286 U.S. 106 (1932), that a decree may be modified only upon a showing of "grievous harm" and that the dangers warranting an injunction have become "attenuated to a shadow" is the proper rule for modification of a school desegregation decree.

2. Whether under the Fourteenth Amendment a federal court may refuse to dissolve a school desegregation decree once local school authorities have established that the school system has become unitary and that there is no causal relationship between the prior constitutional violation and any current conditions in the school system.

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On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF THE DEKALB COUNTY BOARD OF EDUCATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

INTEREST OF *AMICUS CURIAE*

The Board of Education of DeKalb County, Georgia, which has been operating the DeKalb County School System ("DCSS") under federal court supervision for over 20 years, was recently ordered by a panel of the Eleventh Circuit to "consider pairing and clustering of schools, drastic gerrymandering of school zones and . . . busing" in order to alleviate racial imbalances in student assignment that had been caused solely by shifting demographic (housing) patterns in the County occurring after an admittedly effective remedy had been instituted. See Appendix to Petition for a Writ of Certiorari, *Freeman*,

et al. v. *Pitts, et al.* ("*DeKalb* Pet. App."), No. 89-1290, at 23a. That order was issued despite the undisturbed finding of the district court that, with respect to student assignment:

> The DCSS has become a system in which the characteristics of the [former] dual system have been eradicated, or if they do exist, are not the result of past or present intentional segregative conduct by the defendants or their predecessors.

DeKalb Pet. App. 47a. Although the district court's finding as to the effectiveness of the remedy was not reversed, the Eleventh Circuit nevertheless overturned the district court's order ending federal court supervision of student assignment policies on the ground that the district court had applied too lenient a legal standard. See *DeKalb* Pet. App. 24a. Thus, the Eleventh Circuit's approach is congruent with the Tenth Circuit's decision under review in at least one crucial respect: both courts have held that a finding that the original constitutional violation has been remedied is not dispositive in determining whether to terminate federal intervention into the operations of local school systems.[1] Once the existence of a "dual"

[1] The Eleventh Circuit held that enforcement of the federal court desegregation order would continue until the school system simultaneously "maintains at least three years of racial equality in six categories: student assignment, faculty, staff, transportation, extracurricular activities and facilities." *DeKalb* Pet. App. 24a. Regardless of the "cause" of current racial imbalance or the effectiveness of the earlier remedial order in eradicating the original constitutional violation, the Eleventh Circuit made it clear that the DCSS "must take affirmative steps to gain and maintain a desegregated student population." *Id.* at 19a.

The Tenth Circuit in this case held that enforcement of the remedial decree would continue until the school system demonstrates " 'dramatic changes in conditions unforeseen at the time of the decree that both render the protections of the decree unnecessary . . . and impose extreme and unexpectedly oppressive hardships on the obligor.' " *Dowell II*, Pet. App. 12a (citation omitted). The Tenth Circuit, like the Eleventh, finds an affirmative obligation to maintain

school system has been established, both courts reject the need for a *continuing* causal link between the constitutional violation and the scope of an ongoing federally supervised remedy, in favor of a rule that focuses solely on the present condition (*i.e.*, racial balance) of the school system and requires amelioration of *de facto* conditions. See *DeKalb* Pet. App. 19a; *Dowell* v. *Board of Educ. of the Okla. City Pub. Schools* (*Dowell II*), 890 F.2d 1483, 1490-91 (10th Cir. 1989), Pet. App. 13a-15a.

Although DeKalb County's pending petition for certiorari, which is being held pending disposition of this case, presents somewhat different questions than those presented here, DeKalb County has a significant interest in the outcome of this case. See Petition for a Writ of Certiorari, *Freeman, et al.* v. *Pitts, et al.* ("*DeKalb* Pet."), No. 89-1290, at i. Both this case and *Freeman* v. *Pitts* focus on the fundamental questions of how to measure both "compliance" with desegregation orders and at what point formerly *de jure* segregated school systems have fulfilled their remedial obligations and should be relieved of federal court supervision. The Tenth and Eleventh Circuits both focus on achieving and maintaining the singleminded goal of complete racial balance in the public schools. Yet, in doing so, both courts lose sight of the fact that, in our federalist system, their remedial authority is bounded by the requirements of the Constitution and Our Federalism. *Amicus* DCSS submits that once a constitutional violation is remedied and the vestiges of the intentionally segregative dual system have been eliminated in any aspect of the school system (*e.g.*, student assignment), the proper federal rule returns that aspect of the school system to local control. *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976).

desegregated conditions (*id.* at 18a) that justifies an ongoing federal remedy even after the "condition" or violation on which the remedial order is based has been eliminated. *Id.* at 13a.

Racial integration is an important goal, and one that the DCSS has been committed voluntarily to pursuing. *DeKalb* Pet. 3-4. Nevertheless, day-to-day decisions on the allocation of scarce local resources are impaired when federal courts denigrate all other legitimate goals in favor of maintaining arbitrary standards of "racial balance." Both the Eleventh and Tenth Circuits have substituted the "goals" of a federal court decree for constitutional standards, thereby vastly expanding federal authority over petitioner, over the DCSS and over hundreds of similarly situated local school authorities. Because of the importance of the overlapping issues in this case and in the pending *DeKalb County* petition (No. 89-1290) and because the Court's decision in this case will affect the existing status of federal court supervision of the DCSS—either directly or indirectly—the DeKalb County School Board is filing this brief as *amicus curiae* in support of petitioner in this case.[2]

STATEMENT

Amicus DeKalb County School Board agrees with petitioner Board of Education of Oklahoma City's (the "Board's") statement of the case, but wishes to emphasize the following facts:

1. The case against petitioner was filed in 1961. *Dowell* v. *Board of Educ. of the Okla. City Pub. Schools* ("*Dowell I*"), 795 F.2d 1516 (10th Cir.), *cert. denied*, 479 U.S. 938 (1986). In 1972, the "district court ordered the implementation" of the remedial scheme at issue, which became known as the "Finger Plan." *Id.* at 1518. That order utilized "techniques of pairing, clustering, and compulsory busing" to achieve racial balance in student assignment. *Dowell* v. *Board of Educ. of the Okla. City Pub. Schools* ("*Dowell II*"), 890 F.2d 1483, 1486 (10th Cir. 1989), Pet. App. 4a.

[2] Pursuant to Rule 37 of the Rules of this Court, the parties have consented to the filing of this brief. Copies of the letters of consent from the parties have been filed with the Clerk of the Court.

Several years later, the district court held an evidentiary hearing on the Board's motion to close the case. Pet. App. 2b. Based on the evidence presented at that hearing, the district court in 1977 "relinquished jurisdiction over [the] case" because it was convinced that the desegregation plan had been fully carried out "and that the School District had reached the goal of being a desegregated non-racially operated and unitary school system." *Dowell* v. *Board of Educ. of the Okla. City Pub. Schools*, 606 F. Supp. 1548, 1554 (W.D. Okla. 1985); see *Dowell I*, 795 F.2d at 1518.

During the next eight years the Board continued voluntarily to operate the school system pursuant to the requirements of the Finger Plan, with minor alterations, even though the district court had declared the District unitary and terminated the case. In the 1984-1985 school year, however, the Board adopted a new student assignment plan (the "reassignment plan" or "plan"), which eliminated compulsory busing in grades 1 to 4 in favor of neighborhood schools. *Dowell II*, Pet. App. 4a.[3] In response, the plaintiffs moved the district court to "reopen the case," arguing that the Board had wrongfully deviated from the Finger Plan.

After a hearing, the district court found that the principles of res judicata precluded the plaintiffs from challenging the 1977 finding that the school system had "reached the goal of being a desegregated non-racially operated and unitary school system." *Dowell* v. *Board*

[3] The reassignment plan continued to maintain racial balance in all other grades through mandatory busing. In addition, the plan included a "majority to minority" transfer option that permitted elementary students (grades 1-4) in a school in which they were in the majority race to transfer to a school in which they were in the minority. See *Dowell II*, Pet. App. 4a-5a. The district court found that the change in the assignment plan was a response to shifting housing patterns and the resultant increased busing burden (in time and distance) on young black children. *Dowell* v. *Board of Educ. of the Okla. City Pub. Schools*, 606 F. Supp. 1548, 1552 (W.D. Okla. 1985).

of Educ. of the Okla. City Pub. Schools, 606 F. Supp. at 1554. In addition, the district court found that the school system in 1985 continued to operate and function as a non-discriminatory unitary system (*id.* at 1555) and that the reassignment plan was "constitutional"—*i.e.*, that the plan was adopted without any discriminatory intent. *Id.* at 1556. Thus, the district court concluded that there were no "special circumstances" that warranted reopening the case. See *Dowell I*, 795 F.2d at 1518.

2. The court of appeals reversed, holding that the district court had erred in refusing to reopen the case for the purpose of permitting the plaintiffs to "enforce" the provisions of the original remedial order. *Dowell II*, Pet. App. 5a-6a. The key to the court of appeals' decision was its holding that the 1977 finding of unitariness did not affect the continuing vitality of the "mandatory injunction" (*i.e.*, the remedial order), and thus, "the plaintiffs . . . only have the burden of showing that the court's mandatory injunction has been violated." *Id.* at 6a; see *Dowell I*, 795 F.2d at 1519. In so holding, the court of appeals specifically rejected the United States' argument that "once a finding of unitariness is entered, all authority over the affairs of a school district is returned to its governing board, and all prior court orders, including any remedial busing order are terminated." *Dowell I*, 795 F.2d at 1520. In the Tenth Circuit's view, a finding of "unitariness" relates only to the "ministerial function of 'closing' a case" and terminating active (*i.e.*, day-to-day) supervision of school operations. *Id.* The achievement of unitary status in no way affects a school board's continuing obligation strictly to comply with the "prospective operation" of the federal court's remedial order. *Id.*[4]

[4] The court explained that this "standard" for modifying or terminating local school board obligations under federal desegregation decrees is the same legal standard "applicable in all instances where . . . the relief sought is escape from the impact of an injunction." *Id.* (citations omitted).

In sum, the Tenth Circuit found that proof that a desegregation decree had successfully achieved its goal of eliminating discrimination root and branch was not a sufficient basis to dissolve an injunction. Instead, a school board must show that retaining the injunction imposes " 'hardship so extreme and unexpected' as to make the decree oppressive." *Dowell I*, 795 F.2d at 1521. The plaintiffs' only "burden" was to demonstrate that the School Board had deviated from the requirements of the Finger Plan (*Dowell I*, 795 F.2d at 1523); according to the court of appeals, such a showing "constitutes the 'special circumstances' " that justify "reopening" the case under Fed. R. Civ. P. 60(b). *Dowell I*, 795 F.2d at 1522. The court of appeals thus remanded the case to the district court to test the School Board's evidence against the appropriate standard.

3. The district court noted initially that there had been substantial changes in housing patterns that had created the need to modify the Finger Plan. See Pet. App. 19b. However, because residential segregation in certain neighborhoods was the cause for "the predominately black elementary schools" under the new plan, the court addressed whether those patterns of residential segregation could be linked to any unconstitutional action on the part of the Board. *Id.* After reviewing all of the evidence, the district court concluded that the Board had "taken absolutely no action which has caused or contributed to" segregated housing patterns (and, thus segregated neighborhood schools) in certain neighborhoods; in fact, the Board's actions over the past decade had "fostered the neighborhood integration which has occurred in Oklahoma City." Pet. App. 17b-18b.

On remand, the district court addressed the "fundamental issue" whether the "School Board has shown a substantial change in conditions warranting dissolution or modification of the 1972 Order." Pet. App. 5b. The district court determined that the "demographic changes" at issue had created hardship and rendered aspects of

the Finger Plan "oppressive" in a way that would justify modification or dissolution of the injunction. Pet. App. 23b. The district court also held that the reassignment plan, adopted in response to the changes in question, was approved for legitimate, non-discriminatory reasons and that the plan would not disturb the unitary status of the school system—a status that had been maintained "from 1977 to the present." Pet. App. 24b-33b.

Finally, the district court addressed the issue whether the 1972 desegregation decree, which adopted the Finger Plan, should be modified or dissolved. Pet. App. 33b. In considering whether changed conditions warranted modification or dissolution of the decree, the court focused on the issue of whether the purposes of the decree have been "fully achieved." Pet. App. 35b. The district court stated that "[t]he purpose of a desegregation remedy is to 'correct' the condition that offends the Constitution" (Pet. App. 36b), in particular, to "dismantle[] the dual school system." *Id.* In this case, the dual system had been dismantled and "all vestiges of prior state-imposed segregation had been completely removed" from the school system by 1977. Pet. App. 38b, 36b. The plaintiffs' focus on curing racial imbalance in student assignment due to residential segregation—for which the Board was not responsible (Pet. App. 36b)—was an attempt to achieve a remedy "aimed at eliminating a condition that does not violate the Constitution." *Id.* (citation omitted). Thus, the achievement of unitary status, together with the demographic shifts that rendered continued conformity with the Finger Plan "oppressive," was held to be sufficient to support dissolution of the 1972 decree. Pet. App. 39b.

4. A divided panel of the court of appeals again reversed. The court reiterated that modification or dissolution of the decree requires a showing under the standard in *United States* v. *Swift & Co.*, 286 U.S. 106 (1932), that there has been a change in "conditions" that "both render the protections of the decree unnecessary to effectuate the rights of the beneficiary and impose extreme and unexpectedly oppressive hardships on the obligor." *Dowell II*, Pet. App. 12a. However, the court held that the "condition" that occurs as a result of the injunction (*i.e.*, the achievement of unitary status) "cannot alone become the basis for altering the decree . . . ." *Id.* at 13a.[5] In addition to "a finding of unitariness", the Board would have to produce "proof of a substantial change in the circumstances which led to the issuance of that decree." *Id.* at 16a. On review of the evidence, the court conceded that "changed circumstances" had been established (*id.* at 19a-20a) that supported modification of the Finger Plan. *Id.* at 30a.

The court then turned to the issue of whether the court below had erred in vacating the decree (rather than modifying it). According to the court of appeals, it appeared that the Board's reassignment plan "has the effect of making the District 'un-unitary' by reviving the effects of past discrimination." *Dowell II*, Pet. App. 31a. The court made clear that in judging the "effectiveness [of the Board's modification of the decree] in maintaining unitary status" (*id.* at 40a), it was measuring the "plan" solely in terms of its *effects* on racial balance in the school system and not in terms of its relationship to any unconstitutional conduct on the part of the Board:

> we must focus not on whether the Plan is nondiscriminatory but on whether it solves the problems created by the changed conditions in the District.

Id. at 41a. Here, the panel was "troubled because the evidence indicates the Board's implementation of a 'racially neutral' neighborhood assignment plan has had the

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[5] According to the Tenth Circuit, unitariness—defined as a "state of successful desegregation"—simply does not "mandate the later dissolution of the decree without proof of a substantial change in the circumstances which led to the issuance of that decree." Pet. App. 16a.

effect of reviving those conditions that necessitated a remedy in the first instance." *Id.* at 32a. Thus, the court vacated the district court's judgment dissolving the 1972 decree and remanded for consideration of modifications to the Finger Plan that would "maintain racially balanced elementary schools within the framework of changed circumstances that have occurred in the District." *Id.* at 44a-45a.

SUMMARY OF ARGUMENT

I.

The Tenth Circuit assumes without justification that the law applicable to prohibitory antitrust injunctions governs the decision whether to terminate a federal court's remedial decree in a school desegregation case. There can be no doubt that traditional equitable principles inform a federal court's approach in fashioning a remedy for a constitutional violation by state authorities. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15-16 (1971). But it does not follow from this that the injunction standards applied to private antitrust defendants should be applied uncritically to a public school board. See *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976); *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244, 248 (1968). Because the question whether a specific injunction may be modified is anchored to the substantive law justifying the imposition of the original remedy, the proper federal rule for modifying injunctive relief must refer to that substantive law.

The law governing the allocation of private economic rights in antitrust decrees is inapposite to the determination of the appropriate remedy imposed upon state and local authorities for the purpose of curing the effects of past equal protection violations. Antitrust decrees rarely are subject to modification because they operate to prevent ongoing threatened violations. By contrast, school desegregation decrees focus primarily on

the purpose of providing interim remedial relief. The decrees remedying Fourteenth Amendment violations that govern local educational policy are entered in contemplation of their termination once the school authorities have cured the effects of the prior constitutional violation. At that point, the federal court must relinquish control over the school system by dissolving the injunction.

II.

A. A federal court has authority to order injunctive relief in a school desegregation case only to the extent of a proven violation of the Equal Protection Clause of the Fourteenth Amendment. In the development of this substantive rule, this Court has long applied the traditional equitable principle that "the nature of the violation determines the scope of the remedy." *Swann*, 402 U.S. at 16; *Milliken* v. *Bradley*, 418 U.S. 717 (1974) (*"Milliken I"*). The rationale for the limits upon the federal judiciary's powers to remedy effects from conduct of state authorities is bounded by the Constitution and Our Federalism. By requiring petitioners to perpetuate a judicially imposed racial balance in the school system after a finding of unitariness, the court of appeals ignored the principle that the federal judiciary may not regulate the activities of state and local authorities absent a constitutional violation. *Spangler*, 427 U.S. at 434.

B. The substantive law—the Equal Protection Clause in this context—provides both the source and the limits of a federal court's power to impose remedial injunctive relief upon state and local school authorities. According to the traditional equitable principles, "a decree may be changed upon an appropriate showing." *United Shoe Machinery Corp.*, 391 U.S. at 248. The district court properly found that petitioner had made the appropriate showing in this school desegregation case.

Under the substantive law that has evolved in school desegregation jurisprudence, such decrees may be imple-

mented only to remedy segregative effects that are causally linked to racially discriminatory actions of state or local authorities. *Spangler*, 427 U.S. at 434. This Court's decision in *Spangler* makes clear that a federal court must dissolve an injunctive decree in a school desegregation context once the purposes of the decree have been achieved and there has been a finding that there is no causal nexus between any segregated condition in the school system and the prior constitutional violation. By defining the goal of the injunction to remedy conditions beyond the scope of the violation and thus beyond a federal court's power, the court of appeals erred in refusing to dissolve the decree.

ARGUMENT

The Tenth Circuit's holding is premised on its belief, expressed in *Dowell I*, that a desegregation order, once implemented, remains binding on a school system until such time as the school system satisfies the "difficult" and "severe" burden of demonstrating that because of a "substantial change in law or facts" the order has produced "'hardship so extreme and unexpected' as to make the decree oppressive." *Dowell I*, 795 F.2d at 1521. In other words, public school boards are to be treated no different than meat packing companies. Such a rule will severely impair current desegregation efforts of many school boards by removing the major incentive to achieve unitary status. Moreover, if that is indeed the rule for school desegregation cases, then the Tenth Circuit's doctrine signals a watershed change—and a severe deterioration—in federal-state relations.

I. THE COURT BELOW ERRED IN INCORPORATING STANDARDS FROM ANTITRUST LAW TO DETERMINE WHETHER TO MODIFY OR VACATE AN INJUNCTION IN A SCHOOL DESEGREGATION CASE.

As in any other case involving the modification or dissolution of injunctive decrees, this case requires "the proper application of the federal law on injunctive remedies." *Dowell II*, Pet. App. 3a. This Court has held that a "school desegregation case does not differ fundamentally from other cases involving the framing of equitable remedies to repair the denial of *a constitutional right*." *Swann*, 402 U.S. at 15-16 (emphasis added); see also *Hills* v. *Gatreaux*, 425 U.S. 284, 294 n.11 (1976); *Milliken I*, 418 U.S. at 744.[6] For that reason, some of the basic principles that cabin a federal court's authority to modify injunctive relief apply equally to any request to modify a desegregation decree. But it does not follow that the defendant's status as a public entity is irrelevant to the basic question of how long a decree must remain in effect. As applied in the context of school desegregation cases, the rules on federal injunctions do not require decrees against local school authorities to exist in virtual perpetuity. Since *Green* v. *County School Bd.*, 391 U.S. 430 (1968), it has been clear that such decrees were intended to be terminated at the appropriate time: when the school system has achieved unitary status. *Cf. Swann*, 402 U.S. at 28 (discussing the nature of the remedy to be imposed in the "interim period" until the effects of a dual system are eliminated).

It is well established that "an injunction often requires continuing supervision by the issuing court," *System Fed'n No. 91* v. *Wright*, 364 U.S. 642, 647 (1961), and thus the issuing court may modify or dissolve an injunctive decree when "it is no longer equitable that the judgment shall have prospective application." Fed. R. Civ. P. 60(b)(5); see *United Shoe Machinery Corp.*, 391 U.S. at 248; *Wright*, 364 U.S. at 646-48; *United States* v. *Swift*

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[6] See *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424 (1976) (district court exceeded authority by requiring annual readjustment of attendance zones); *cf. Milliken* v. *Bradley*, 418 U.S. 717 (1974) (district court exceeded its authority by ordering interdistrict remedy); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971) (district court had remedial authority to decree system of bus transportation and use mathematical ratios as starting point).

& *Co.*, 286 U.S. 106, 114 (1932); *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856). "'[S]ound judicial discretion may call for the modification of the terms of an injunctive decree if the circumstances, whether of law or fact, obtaining at the time of its issuance have changed, or new ones have since arisen.'" *Pasadena City Bd. of Educ.* v. *Spangler*, 427 U.S. 424, 437 (1976) (quoting *System Fed'n No. 91* v. *Wright*, 364 U.S. at 647). Because prospective injunctions are issued in a variety of differing contexts,[7] the determination whether an injunction should be modified or dissolved "must be based upon the specific facts and circumstances" of the particular case. *United Shoe Machinery Corp.*, 391 U.S. at 249.

Most important, the determination whether to vacate or modify a decree must be made in light of the substantive law upon which the decree was based. A court's authority to enter an injunctive decree is necessarily derived from the substantive law "which the decree is intended to enforce." *System Fed'n No. 91* v. *Wright*, 364 U.S. at 651; see *Ford Motor Co.* v. *EEOC*, 458 U.S. 219, 241 (1982). In *Wright*, for example, the Court held that the district court erred in refusing to modify a consent decree under the Railway Labor Act in response to a change in the underlying substantive law.[8] When Congress had

[7] See, *e.g.*, *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244 (1968) (unlawful monopoly in shoe machinery market); *Chrysler Corp.* v. *United States*, 316 U.S. 556 (1942) (unlawful affiliation of automobile manufacturer and finance company); *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561 (1984) (discrimination in city employment).

[8] A consent decree, like a litigated decree, may be modified upon the proper showing of changed circumstances. See *System Fed'n No. 91* v. *Wright*, 364 U.S. 642, 650-51 (1961). While the particular substantive law may allow additional relief under a consent decree, "the court's *exercise* of the power to modify the decree over the objection of a party to the decree does implicate" the limits imposed by the substantive law. *Local No. 93, Int'l Ass'n of Firefighters* v. *City of Cleveland*, 478 U.S. 501, 523 n.12 (1986) (original emphasis); see also *id.* at 526-28 (consent decree must be consistent with underlying substantive-law basis for decree).

amended the Act to legalize one of the practices prohibited by the decree, the Court made clear that the decree should have been modified so that its terms would not "conflict with statutory objectives." *Id.*; see also *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) at 429-32 (subsequent congressional action legalizing bridge position required modification of injunction to remove the bridge); *cf. Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561, 576 n.9 (1984) (modification of consent decree permitted only to extent it would be consistent with Title VII). Only by referring to the substantive law that formed the basis of the original decree may a court ensure that its order remains consistent with its original purpose. See *United Shoe Machinery Corp.*, 391 U.S. at 251-252 (cases interpreting the Sherman Act define the purposes of the antitrust injunction).

Because the underlying substantive law is an essential check on a federal court's power to issue and modify injunctions, the heavy reliance of the court below on the substantive standards for modification of antitrust decrees was in error. The purposes of antitrust decrees are to enjoin continuing and threatened violations by private entities, to cure past violations and to deprive the defendants of any economic benefits from their past unlawful acts. See *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 187-89 (1944); *United States* v. *Grinnell Corp.*, 384 U.S. 563, 577-78 (1966). A prohibitory antitrust decree such as that in *Swift* is particularly likely to be impervious to modification because it is properly assumed that the defendants will continue to act in their economic self-interest and thus will not resist the temptation to reap anti-competitive benefits, as long as market conditions permit such conduct. See *United States* v. *Glaxo*

Group, Ltd., 410 U.S. 52, 63 (1973); *Crescent Amusement Co.*, 323 U.S. at 190; see also *United States* v. *Parke, Davis & Co.*, 362 U.S. 29, 48 (1960); *United States* v. *United States Gypsum Co.*, 340 U.S. 76, 88-89 (1950). Given the threat that, absent the injunction, the defendant will resume the anti-competitive conduct, a scheme of permanent mandatory relief is likely to be necessary to achieve the purposes of the antitrust laws.

The standard for modifying the antitrust decree in *United States* v. *Swift & Co.*, 286 U.S. 106 (1932)—which is the cornerstone of the decision below—incorporates this concern for the ongoing threat of violation. In *Swift*, the defendants sought a significant modification of a 1920 consent decree which had imposed restraints on the meat packers who had created "an unlawful monopoly of a large part of the food supply of the nation." 286 U.S. at 111.[9] In considering the requested modification, the Court noted a distinction "between restraints that give protection to rights fully accrued upon facts so nearly permanent as to be substantially impervious to change, and those that involve the supervision of changing conduct or conditions and are thus provisional and tentative." *Id.* at 114. The *Swift* injunction fell within the former category because of the continuing threat of defendants' monopolistic power that was "one of the chief reasons" for the original injunction. *Id.* at 115. The Court concluded that any changes in the meat market that may have occurred were insignificant to affect "the old-time abuses in the sale of other foods," and that the market power wielded by the meat packers was a "substantially unchanged" fact. *Id.* at 117. Therefore, because the purposes of the original decree had not been fully achieved and the conduct which led to the decree was still threatened, the defendants had failed to demonstrate that the decree should be modified. *Id.* at 116-120.[10]

[9] Before the request for modification, two prior "vigorous assault[s]" upon the decree were heard by this Court in *Swift & Co.* v. *United States*, 276 U.S. 311 (1928) and *United States* v. *California Coop. Canneries*, 279 U.S. 553 (1929). *Swift*, 286 U.S. at 113. The third suit attacking the decree was styled as a petition "to modify the consent decree and to adapt its restraints to the needs of a new day." *Id.*

Contrary to the opinion of the court of appeals in this case (*Dowell II*, Pet. App. 12a (quoting *Swift*, 286 U.S. at 119)), the burden of proof applied in *Swift*—the requirement to show unforeseen conditions giving rise to grievous harm and the disappearance of the dangers addressed by the decree—cannot be applied across the board to all requests to modify or dissolve an injunctive decree.[11]

[10] The Court made clear that the meat packers had sought to modify the injunction while there was strong reason to believe that the defendants would violate the antitrust laws if the restraints were alleviated. See 286 U.S. at 117-119. Because defendants had failed to make a showing that the threats of anticompetitive conduct "have become attenuated to a shadow" (*id.* at 119), the Court held that "[n]othing less than a clear showing of grievous wrong evoked by new and unforeseen conditions should lead us to change what was decreed after years of litigation with the consent of all concerned." *Id.* The decision makes clear that in order to achieve the purposes of the antitrust laws, otherwise lawful business practices may be enjoined as long as the defendants are in a position to abuse their market power, absent the injunction. See *id.* at 116-17. When this Court's refusal to modify the antitrust decree in *Swift* is therefore "read in light of th[e] context" of the continuing threat of unlawful restraints of trade that existed in that case (*United Shoe Machinery Corp.*, 391 U.S. at 248), it is clear that the strict requirement of "a clear showing of grievous wrong evoked by new and unforeseen conditions" (*Swift*, 286 U.S. at 119), should not apply to modification of injunctions governing education policy—at least where the original violation has been cured.

[11] The court of appeals incorrectly stated that Rule 60(b)(5) "codifies" this statement in *Swift*. *Dowell II*, Pet. App. 13a. For two reasons, it is clear that Rule 60(b)(5) does not codify the strict standard applied in *Swift*. First, Rule 60(b) simply codifies the *procedure* for moving to modify an injunction; for example, it "does not assume to define substantive law as to the grounds for vacating judgments, but merely prescribes the practice in proceedings

Instead of announcing an absolute standard for modifying all federal injunctions, *Swift* simply "holds that [a decree] may *not* be changed in the interests of the defendants if the purposes of the litigation as incorporated in the decree (the elimination of monopoly and restrictive practices) have not been fully achieved." *United Shoe Machinery Corp.*, 391 U.S. at 248.[12]

Such a standard is particularly inappropriate in the school desegregation context, where the purpose of the injunction has been met and intentional (*de jure*) segregation and the effects of past intentional segregation have been eliminated.[13] See *infra* pages 24-28; *Columbus Bd.*

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to obtain relief." Fed. R. Civ. P. 60, Notes of Advisory Comm. on 1946 Amendment. Second, Rule 60(b) could not impose upon all types of injunctions the rule applied to an antitrust decree, such as in *Swift*, because such a rule would ignore the substantive law underlying the decree. See *supra* pages 13-17; *cf. Stotts*, 467 U.S. at 576 n.9 (disputed modification "cannot be resolved solely by reference to the terms of the decree and notions of equity").

[12] According to the court of appeals, under the *Swift* standard a school board must show that the changed conditions were unforeseen and have created oppression. *Dowell II*, Pet. App. 12a. But the nature of the school desegregation decree itself renders these prongs an inappropriate basis for decision. First, changed conditions are inherently foreseeable in every desegregation case because from the outset the decree envisions a day when it will end: each decree anticipates that federal-court intervention will cease and local autonomy will return when the vestiges of unlawful discrimination are eliminated root and branch. See *Green* v. *County School Bd.*, 391 U.S. 430 (1968). Second, oppression in its most basic sense occurs when a federal court continues to control the day-to-day operation of a public school system that has already achieved full unitary status.

[13] Reliance upon the standard for modification or dissolution of injunctive relief applied in antitrust cases against a private defendant is particularly inappropriate in a school desegregation case. Even under the antitrust laws, a state actor, such as a school board, has its conduct judged with regard to "principles of federalism and state sovereignty." *Town of Hallie* v. *City of Eau Claire*, 471 U.S. 34, 38 (1985). Thus, even if this were an antitrust case against a public school system, it seems quite unlikely that the extreme standards embodied in *Swift* would control. Accordingly, it makes no sense to employ those requirements rigidly in such a completely different legal setting.

of Educ. v. *Penick*, 443 U.S. 449, 458-59 (1979); *Milliken* v. *Bradley*, 433 U.S. 267, 290 (1977); (*"Milliken II"*); *Spangler*, 427 U.S. at 435; *Keyes* v. *School Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 200-201 (1973); *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 31 (1971). That determination of whether a school system has become unitary is extremely fact-specific and a matter committed in large measure to the fact-finding of the district courts supervising the decree that are "uniquely situated . . . to appraise the societal forces at work in the communities where they sit." *Penick, supra*, 443 U.S. at 469-71 (Stewart, J., concurring in *Penick* and dissenting in *Dayton Bd. of Educ.* v. *Brinkman*, 443 U.S. 526 (1979) (*"Dayton II"*)); see also *Brown* v. *Board of Educ.*, 347 U.S. 483, 495 (1954). But, at least, where such a finding of unitariness has been entered (*Dowell*, 677 F. Supp. 1503, 1506 (W.D. Okla. 1987), Pet. App. 56), it is clearly impermissible to enjoin a school system to continue operating under the same federal court injunction that was entered in response to a finding of unlawful *de jure* segregation, which, by definition, has been fully remedied. See *infra* pages 25-27.

The purpose of the decree in *Swift* was to prohibit threatened conduct.[14] The purpose of all desegregation decrees is to reach the point where they are no longer needed—the elimination of the old dual system and its effects "root and branch." *Green* v. *County School Bd.*, 391 U.S. 430, 438 (1968). That point—unitary status—means that the decrees have *fully* served their purpose. To con-

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[14] There is no suggestion in the decisions of the court of appeals and the district court that absent a federal injunctive restraint, local authorities would return to a *de jure* segregated school system. See *Dowell*, 677 F. Supp. 1503, 1515-16, 1519 (W.D. Okla. 1987) (Pet. App. 24b-25b, 31b-33b); *Dowell II*, Pet. App. 41a.

tinue these decrees after this point in time is a groundless incursion of federal power in local affairs.

II. THE DEMANDS OF THE EQUAL PROTECTION CLAUSE PROVIDE THE PROPER RULE FOR DETERMINING WHETHER AN INJUNCTIVE DECREE AGAINST LOCAL SCHOOL AUTHORITIES SHOULD BE CONTINUED.

The scope of a federal court's equitable power does not expand or change depending upon the stage in the life of a case in which that power is exercised. Thus, the determination whether an injunctive remedy should be modified or vacated is bounded by the same substantive law that defines the scope of the initial remedy: "[a]s with any equity case, the nature of the violation determines the scope of the remedy." *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971).

Where the plaintiffs have established that state or local authorities have violated the Fourteenth Amendment through intentional discrimination on the basis of race, a federal court's "equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies," *id.* at 15, but the court may exercise this remedial power "only on the basis of a constitutional violation." *Id.* at 16.[15] Thus—regardless of the prior status of the school district or the "goals" of any existing order—federal court "decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation." *Milliken II*, 433 U.S. at 282; see also *Dayton Bd. of Educ.* v. *Brinkman*, 433 U.S. 406, 419-20 (1977) ("*Dayton I*"); *Milliken I*, 418 U.S. at 738; *cf. General Bldg. Contractors Ass'n, Inc.* v. *Pennsylvania*, 458 U.S. 375, 399 (1982) (judicial remedial powers "extend no farther than required by the nature and the extent of th[e] violation"); *Hills* v. *Gatreaux*, 425 U.S. 284, 293-94 (1976); *Rizzo* v. *Goode*, 423 U.S. 362, 378 (1976).

[15] See also *Spangler*, 427 U.S. at 443 (Marshall, J., dissenting) (federal court has broad discretion to fashion remedial relief "*until* such a unitary system is established") (quoting *Swann*, 402 U.S. at 31-32) (emphasis added).

In *Milliken I*, for example, this Court held that the district court exceeded its remedial equitable powers by ordering a desegregation remedy that extended beyond the City of Detroit into the neighboring school districts. This interdistrict remedy "was held to be an impermissible remedy . . . because it contemplated a judicial decree restructuring the operation of local governmental entities that were not implicated in any constitutional violation." *Hills v. Gatreaux*, 425 U.S. at 296; *Milliken I*, 418 U.S. at 744-45; *Swann*, 402 U.S. at 16. Thus, at the very least, it is well established that "a federal court is required to tailor 'the scope of the remedy' to fit 'the nature and extent of the constitutional violation.'" *Gatreaux*, 425 U.S. at 293-94 (quoting *Milliken I*, 418 U.S. at 744). The decision below is contrary to this fundamental axiom.

A. A Federal Court's Equitable Discretion To Impose, Modify Or Vacate An Injunction Structuring The Operations Of Local School Districts Must Be Informed By The Respect For Local Autonomy Embodied In Our Federalism.

The decision of the court of appeals is admittedly aimed at maintaining racially balanced student populations, even though the imbalance which exists if a race-neutral neighborhood assignment method is instituted cannot be traced to any unconstitutional conduct. The court of appeals simply disagrees with the decision of the local authorities who desire, for otherwise legitimate reasons, to make the change. The racial balance that the court of appeals has ordered maintained perpetually is not necessary as "an interim corrective measure" (*Swann*, 402 U.S. at 27); rather, it simply reflects the court's preference for racially balanced schools. Yet, unless used in a "corrective" way, such a judgment invades a province heretofore exclusively belonging to the states.

It is certainly arguable that Congress, exercising its power to legislate under section 5 of the Fourteenth Amendment (U.S. Const. amend. XIV, § 5), could make this judgment over state objections, but Congress has already spoken to the issue and agrees with the Oklahoma City Board of Education.

> The Congress declares it to be the policy of the United States that—— . . . (2) the neighborhood is the appropriate basis for determining public school assignments.

20 U.S.C. § 1701(a)(2).

In both *Milliken I* and *Gatreaux*, this Court acknowledged concern that a federal court's injunction restructuring local government operations in response to a finding of a constitutional violation should be sensitive to the constitutionally mandated federal-state relationship. See, *e.g.*, *Gatreaux*, 425 U.S. at 294. Because a federal court's decision to enter or sustain a desegregation order displaces the "vital national tradition" of "local autonomy of school districts," the exercise of these powers is bounded by constitutional principles of federalism. *Dayton I*, 433 U.S. at 410; *Milliken I*, 418 U.S. at 744-45; see also *Spangler*, 427 U.S. at 434-35; *Swann*, 402 U.S. at 15-16; *cf. Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561, 576-77 n.9 (1984). The court of appeals in this case, by importing standards for modification of wholly *private* remedies, simply ignored such considerations.

While this Court has never directly set forth the framework for modifying injunctions issued to reform state institutions, lower courts that must "grapple with the flinty, intractable realities of day-to-day implementation of th[e] constitutional commands" (*Swann*, 402 U.S. at 6), have long noted the need for flexibility in modifying injunctions that structurally reform state programs. In contrast, injunctions that allocate economic rights among private parties (including, for example,

the antitrust injunction in *Swift*) do not implicate such federalism concerns. Indeed, this Court recognized this very distinction in *United States* v. *Swift & Co.*, 286 U.S. at 114.[16]

A federal court in determining whether a decree should be dissolved "must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.'" *Rizzo* v. *Goode*, 423 U.S. 362, 378 (1976) (quoting *Stefanelli* v. *Minard*, 342 U.S. 117, 120 (1951)); see also *Milliken II*, 433 U.S. at 280-81. When equity jurisdiction to fashion injunctive remedies is vested in "a system of federal courts representing the Nation, subsisting side by side with 50 state judicial, legislative, and executive branches, appropriate consideration must be given to principles of federalism in determining the availability and scope of equitable relief." *Rizzo* v. *Goode*, 423 U.S. at 379 (citing *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 928 (1975)).[17] Appropriate recog-

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[16] The courts of appeals also have noted this distinction in their review of modification of injunctions. See, *e.g.*, *Money Store, Inc.* v. *Harriscorp Finance, Inc.*, 885 F.2d 369, 374-377 (7th Cir. 1989) (Posner, J., concurring); *Kozlowski* v. *Coughlin*, 871 F.2d 241, 247 (2d Cir. 1989); *Twelve John Does* v. *District of Columbia*, 861 F.2d 295, 298 (D.C. Cir. 1988); *Badgley* v. *Santacroce*, 853 F.2d 50, 52-53 (2d Cir. 1988); *Plyler* v. *Evatt*, 846 F.2d 208, 212 (4th Cir.), *cert. denied*, 109 S.Ct. 241 (1988); *Ruiz* v. *Lynaugh*, 811 F.2d 856, 861 (5th Cir. 1987); *Duran* v. *Elrod*, 760 F.2d 756, 758 (7th Cir. 1985); *Newman* v. *Graddick*, 740 F.2d 1513, 1520 (11th Cir. 1984); *Nelson* v. *Collins*, 659 F.2d 420, 424 (4th Cir. 1981); *New York State Ass'n for Retarded Children, Inc.* v. *Carey*, 706 F.2d 956, 967-71 (2d Cir.), *cert. denied*, 464 U.S. 915 (1983); see also *Spangler* v. *Pasadena City Bd. of Educ.*, 611 F.2d 1239, 1245 n.5 (9th Cir. 1979) (Kennedy, Circuit Judge, concurring).

[17] The Court recently reaffirmed that "one of the most important considerations governing the exercise of equitable power is proper respect for the integrity and function of local government institutions." *Missouri* v. *Jenkins*, 58 U.S.L.W. 4480, 4484 (1990); see also *Spallone* v. *United States*, 110 S.Ct. 625, 632 (1990) ("'[t]he

nition of such federalism concerns precludes consideration of requests to modify a desegregation decree under a legal standard that presumes that the original injunction will be permanent. See *supra* pages 16-20 and note 12.

B. A Federal Court's Authority To Continue A School Desegregation Decree Terminates When It Is Established That Intentional Segregation Has Ceased And Current Conditions Are Not Attributable To Prior Segregative Acts.

To justify the decree of injunctive relief, "it must be shown that racially discriminatory acts of the state or local school districts . . . have been a substantial *cause* of [the] segregation." *Milliken I*, 418 U.S. at 745 (emphasis added); see also *Spangler*, 427 U.S. at 434 (plaintiff must establish that "school authorities have in some manner caused unconstitutional segregation"). Moreover, when a violation of equal protection is alleged, a plaintiff must establish that the state action which is being challenged was adopted with a discriminatory purpose. *Keyes* v. *School Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 203 (1973); *Washington* v. *Davis*, 426 U.S. 229, 239-41 (1976); *Arlington Heights* v. *Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 264-66 (1977).

These principles are essentially embodied and applied in *Spangler*. In *Spangler*, the Court reversed the refusal of the district court to vacate a portion of an injunctive decree after that decree had succeeded in remedying completely the student assignment portion of the violation previously found. Even though the Pasadena Unified School District had not yet achieved complete unitary

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federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs, consistent with the Constitution' ") (quoting *Milliken II*, 433 U.S. at 280-81).

status,[18] the Court held that absent a finding that the racial imbalance to which the decree was addressed "[w]as in any manner caused by segregative actions chargeable to the defendants," 427 U.S. at 435, there could be no basis for "judicially ordering assignment of students on a racial basis." *Id.* at 434; see also *Swann*, 402 U.S. at 28 ("[a]bsent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis").[19]

There is no principled way to reconcile the holding in *Spangler* with the refusal of the court of appeals in this case to vacate an injunction which requires assignment of students on a racial basis in a school district which the district court had found to have completed fully the remedial process. *Spangler* stands squarely for the proposition that parts of a remedial decree in school desegregation cases not aimed at remedying conditions causally

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[18] *Spangler*, 427 U.S. at 436. The Pasadena Unified School District was not declared to have attained complete unitary status until 1979. *Spangler* v. *Pasadena City Bd. of Educ.*, 611 F.2d 1239 (9th Cir. 1979).

[19] In addition to the rule set forth in *Swann* and *Spangler*, this Court's standing doctrines provide a useful guide to the necessary causal nexus between the constitutional violation and the scope of a federal court's equitable power. Both the standing inquiry and the "scope of remedy" analysis involve questions about causation and its relationship to the question of a federal court's power. See *Allen* v. *Wright*, 468 U.S. 737, 760 (1984) (whether a party is entitled to injunctive relief is closely related to "[c]ase-or-controversy considerations"). In order to invoke a federal court's jurisdiction to seek relief for an alleged injury, a plaintiff must demonstrate (1) that the alleged injury "fairly can be traced to the challenged action" and (2) that the alleged injury is "likely to be redressed" by the requested relief. *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 38, 41 (1976). A similar inquiry should guide requests for modification of injunctive relief; once the injunctive relief can no longer be "fairly traced" to an injury attributable to a constitutional violation, then the injunction should be lifted.

connected to unconstitutional conduct exceed the power of federal courts and must be vacated. The decision below violates the holding in *Spangler* because it orders indefinite compliance with just such a decree.

In this case, the causal relationship between the school authorities' unconstitutional conduct and the segregative effects were established in 1972. As the party moving for modification, the school authorities have a "burden . . . to satisfy the court that their [current] racial composition is not the result of present or past discriminatory action on their part." See *Swann*, 402 U.S. at 26; *Keyes* v. *School Dist. No. 1, Denver, Colo.*, 413 U.S. at 211 n.17 (school authorities' burden "to show that current segregation is in no way the result of these past segregative actions"). When this burden is met, however, school authorities have no further "duty" to remedy a lack of racial balance due to demographic or other factors and the injunction should be lifted. See *Spangler*, 427 U.S. at 436 (once the goal of the remedy is met, federal court may not require annual adjustments "to ensure that the racial mix desired by the court was maintained in perpetuity"); *Swann*, 402 U.S. at 28 "[a]bsent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis"). Applying this standard, the district court found that the constitutional violation had been cured over ten years ago and that the break in the causal link between the violation and current conditions was well established.

In light of such findings, the district court quite properly held that further equitable relief could be imposed only upon proof of a further constitutional violation. By reversing that holding in favor of a more expansive view of the Board's "duty," the Tenth Circuit erroneously expanded the desegregation remedy beyond the scope of the violation. As the Fifth Circuit correctly noted in *United States* v. *Overton*,

> continuing limits imposed as a remedy after the wrong is righted effectively changes the constitutional measure of the wrong itself; it transposes the dictates of the remedy for the dictates of the Constitution and, of course, they are not interchangeable.

834 F.2d 1171, 1176 (5th Cir. 1987).[20] In ordering the school board to remedy the lack of racial balance caused by demographic changes, the Tenth Circuit has done exactly what the Fifth Circuit warned against: it has substituted racial balance rather than the "undoing" of unlawful segregation as the baseline of the remedial order.[21]

In sum, the fundamental error of the court of appeals in this case—and of the Eleventh Circuit in *Freeman* v. *Pitts*—was to measure current conditions in the schools against a standard or "goal" that was not closely tied to the scope of the substantive violation, as defined by the Constitution. The court of appeals' rejection of any requirement of a causal link between the condition being remedied and a violation of the Constitution (as was advocated by the United States, see *Dowell I*, 795 F.2d

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[20] The Fifth Circuit stated that the desire to press for remedies beyond the segregation caused by the constitutional violation "rests upon a fear that the Fourteenth Amendment, proscribing as it does only purposeful discrimination, inadequately protects desegregation gains . . . ." *Overton*, 834 F.2d at 1176.

[21] Despite the understandable desire of the court below to "protect" the goal of a racially balanced student body,

> accommodation of federal superintendence and federalism will not tolerate the idea that although the wrong is righted, the magnitude of the past wrong nonetheless justifies perpetuation of a federal order limiting the ambit of a school district's self-governance.

Overton, 834 F.2d at 1177. The standard adopted by the court below simply fails to recognize that "[i]t is state government that [the court was] asked to enjoin" and that, "having righted the wrong, the limits [the court should] impose on the state can be drawn no more tightly than the limits of the Constitution." *Id.*

at 1520) opens the door to virtually limitless remedial litigation in which local governments will be ordered to undertake extraordinary remedies in pursuit of a "perfect" racially-balanced school system—a "solution that may be unattainable in the context of the demographic, geographic, and sociological complexities of modern urban communities." *Estes* v. *Metropolitan Branches of the Dallas NAACP*, 444 U.S. 437, 448 (1980) (Powell, J., dissenting). Because such a result is contrary to the requirements of the Constitution and contrary to fundamental equitable principles, the decision below must be reversed.

CONCLUSION

The judgment of the court of appeals should be reversed.

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